

Appeal from a decision of District Manager, Tulsa District Office, Oklahoma, Bureau of Land Management, requiring publication of notice of color-of-title application NM-58610(OK).

Affirmed.

1. Applications and Entries: Generally -- Color or Claim of Title:
Generally -- Notice: Generally

BLM may properly require an applicant under sec. 1 of the Color of Title Act, as amended, 43 U.S.C. § 1068 (1982), to publish a notice of his application, in accordance with 43 CFR 2541.5, regardless of any prior publication pursuant to state law in connection with a tax sale of the property sought.

APPEARANCES: Robert E. Richards, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Robert E. Richards has appealed from a decision of the District Manager, Tulsa District Office, Oklahoma, Bureau of Land Management (BLM), dated January 16, 1985, requiring publication of notice of color-of-title application NM-58610(OK).

On January 2, 1985, appellant and Madalyn E. Richards filed an amended class 1 color-of-title application for 0.32 acres of land situated in lots 1 and 2, block 54, sec. 4, and portions of lots 1 through 5, block 4, and lot 8, block 6, sec. 5, T. 1 S., R. 12 E., Cimarron Meridian, Texas County, Oklahoma, within the townsite of Texhoma, pursuant to section 1 of the Color of Title Act, as amended, 43 U.S.C. § 1068 (1982). 1/ In his January 1985 decision,

1/ The record indicates that appellant acquired title to portions of lots 1 through 5, block 4, through a tax deed from the State of Oklahoma, dated Dec. 16, 1968, and that appellant quitclaimed the land to himself and Madalyn E. Richards, "husband and wife as joint tenants" on Jan. 5, 1979. This is revealed in a list of conveyances attached to appellant's original color-of-title application filed July 30, 1984. By letter dated Sept. 17,

the District Manager informed appellant that the color-of-title application had been "approved for patent" and required him to submit the purchase money, to publish an attached notice "once weekly for four consecutive weeks" in the Guymon Daily Herald and to submit certain proof of publication. The District Manager stated that "[o]nce these requirements have been met, a patent will be issued provided no adverse claims are received during the publication period."

In his statement of reasons for appeal, appellant objects to the requirement of publication, arguing that appellant's purchase of the lots from the State of Oklahoma in a tax sale had already been the subject of publication, and that "[n]o one contested my intent for clear title." Appellant states that, after he purchased the lots, he was required to publish his intent to obtain clear title in the Guymon Daily Herald "more than the 4 times required." Appellant concludes that the lots are worth "little more than the publication costs," and that there are no adverse parties. 2/

The record contains a copy of a "Proof of Publication," apparently submitted by appellant with his amended color-of-title application, which is signed by the editor of the Guymon Daily Herald and dated October 25, 1982. The document states that an attached notice was published for three consecutive weeks between October 9 and 23, 1982. The notice states, as to lot 8, block 6, and lots 1 and 2, block 54, that appellant is the owner of the land under tax-sale certificates and that, unless redeemed, the land would be conveyed to appellant by tax deed. The record also contains a copy of notice of an application for a tax deed, apparently submitted by appellant with his original color-of-title application. This notice indicates that it was published in a newspaper, presumably the Guymon Daily Herald, on October 10, 1968. This notice is essentially the same as the above-mentioned notice and refers to portions of lots 1 through 5, block 4.

fn. 1 (continued)

1984, BLM requested appellant to amend his application to include Madalyn E. Richards as a co-applicant and to include other land within the townsite acquired by appellant. Appellant's amended application was signed by Ms. Richards and included lot 8, block 6, and lots 1 and 2, block 54. The record also contains a copy of a tax deed, dated June 30, 1983, whereby the State of Oklahoma conveyed that land to appellant and Madalyn E. Richards, "husband and wife as joint tenants." Appellant's notice of appeal purports to be an appeal solely on his own behalf, and not on behalf of Ms. Richards. Accordingly, we conclude that as to Ms. Richards, the January 1985 decision of the District Manager was final. 43 CFR 4.411(c).

2/ In an analysis of appellant's appeal, dated Feb. 6, 1985, the Area Manager, Oklahoma Resource Area Headquarters, takes exception to appellant's assessment of the value of the land:

"[L]ots in the townsite of Hitchland, Oklahoma (a less developed townsite than Texhoma and where land values tend to be lower) of similar size have been appraised at \$250.00. Publication of the notice required in the Decision of January 16, 1985 would cost between \$40.00 to \$70.00. Therefore, the value of the lots far exceeds the publication costs."

[1] The applicable regulation, 43 CFR 2541.5, provides that:

(a) The applicant will be required to publish once a week for four consecutive weeks * * * , at his expense, in a designated newspaper and in a designated form, a notice allowing all persons claiming the land adversely to file * * * their objections to the issuance of patent under the application. * * *

(b) The applicant must file a statement of the publisher, accompanied by a copy of the notice published, showing that publication has been had for the required time.

The January 1985 BLM decision was clearly made in accordance with this regulation, which requires publication regardless whether there has been any prior publication by the color-of-title applicant. Neither BLM nor the Board has the authority to waive compliance with the mandatory requirements of a duly promulgated regulation of the Department, which has the force and effect of law and is binding on all Departmental officials. Joseph J. C. Paine, 83 IBLA 145, 147 (1984), and cases cited therein.

The requirement of publication dates from the original instructions in Circular No. 1186, dated April 15, 1929, which were intended to implement the Color of Title Act. GLO Cir. 1186, 52 L.D. 611, 614 (1929). The requirement is specifically intended to fulfill the provision in section 1 of the Color of Title Act that "no patent shall issue * * * for any tract to which there is a conflicting claim adverse to that of the applicant, unless and until such claim shall have been finally adjudicated in favor of such applicant." 43 U.S.C. § 1068 (1982). Such adverse claims are inevitable in cases of adverse possession (see, e.g., Martin v. Lord, 59 I.D. 435 (1947)), and publication is necessary to put adverse claimants on notice of a pending color-of-title application so that their claims can be "finally adjudicated." Cf. Richard W. Rowe, 20 IBLA 59, 82 I.D. 174 (1975), aff'd, Rowe v. Hathaway, Civ. No. 75-1152 (D.D.C. July 29, 1976). The notice gives adverse claimants an opportunity to assert their claims and to object to the issuance of a patent, especially on the basis that the applicant has not complied with the statutory and regulatory requirements under Federal law. Cf. Henry King Middleton, Jr., 73 I.D. 25 (1966). The notice is simply different from the previously published notices referred to supra which only served to notify those claiming an interest in the land that the State would convey the land to appellant in the absence of redemption. The prior notices did not fulfill the purposes of the notices required by 43 CFR 2541.5.

Accordingly, we conclude that BLM properly required appellant to publish notice of color-of-title application NM-58610(OK), in accordance with 43 CFR 2541.5. Cf. Rajneesh Investment Corp., 65 IBLA 307 (1982); Ivie G. Berry, 25 IBLA 213 (1976); John C. Brinton, 13 IBLA 69 (1973). Appellant has 60 days following receipt of this decision to comply with the January 1985 BLM decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

R. W. Mullen
Administrative Judge.

